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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

STEPHANIE H. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D045707

(San Diego County
Super. Ct. No. 513349B)

PROCEEDINGS in mandate after reference to a Welfare and Institutions Code
section 366.26 hearing. Julia Kelety, Judge. Petitions denied.

Stephanie H. and B.H. (B.), the parents of Hellena H., filed petitions for extraordinary writ relief (Welf. & Inst. Code, § 366.26,¹ subd. (l); Cal. Rules of Court, rule 38.1), challenging the juvenile court's ruling that terminated their reunification services after 18 months and set the section 366.26 permanency planning hearing for Hellena. Each parent contends that the court erred by (1) finding reasonable services had been provided to him or her, and (2) not continuing services beyond the 18-month date.

We issued an order to show cause, the San Diego Health and Human Services Agency (HHSA) responded, and the parties waived oral argument. We review the petitions on the merits and deny them.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2003 HHSA took 10-month-old Hellena into protective custody and filed a petition on her behalf, alleging she was at substantial risk of harm because B. had sexually abused her half-sister. (§ 300, subd. (j)).²

In August Stephanie and B. submitted to the allegations of the petition. The court made a true finding, declared Hellena a dependent, and ordered the parents to comply

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

² In April 2000 HHSA had filed a petition alleging B. had sexually abused Hellena's half-sister, S.W., then four years old.(CT 4, 51)! Hellena's half-brother, T.S., also was removed from the home because he was considered at risk. Stephanie did not reunify with Hellena's half-siblings, who were placed in guardianships with their maternal grandmother. In 1995, B. was arrested in Chicago on charges of sexually abusing a minor—the daughter of his then-girlfriend. B. consistently denied the allegations that he molested S. W. and the girl in Chicago throughout this proceeding until late 2004.

with their case plans. Stephanie's case plan called for her to undergo counseling and participate in a domestic violence program and the SAFE PATHS program, which addresses sexual abuse issues. B.'s case plan called for him to undergo a psychological evaluation and counseling, and participate in a domestic violence program, a program addressing molest issues, and a parenting course.³

Stephanie enrolled in the SAFE PATHS program and attended it regularly, but the program director reported that she maintained B. had not molested their daughter. During a psychological evaluation, Stephanie also denied B. had molested the girl. After Stephanie did not show up for scheduled appointments with a referred therapist, the social worker arranged for her to be seen by Dr. Warren O'Meara. Stephanie attended only the initial session. Stephanie's attendance in a domestic violence program was inconsistent, and the program director expressed concerns about her participation.

B. also enrolled in SAFE PATHS, but was dropped from the program in October for being argumentative and because he was suspected of being under the influence. A psychologist who evaluated B. reported he had significant anger and potential explosive behaviors. The psychologist could not assess B.'s risk for sexually abusive behavior because of the ambiguous, conflicted and unclear information B. related to him on this issue. B. presented the social worker with certificates showing he completed a family skills development program in September and outpatient substance abuse treatment

³ In August the court ordered B. to undergo an evaluation for the Substance Abuse Recovery Management Systems program (SARMS), the juvenile court's drug treatment case management program.

program in January 2004. B. enrolled in a domestic violence treatment program and was doing well. B. also had begun therapy.

In February 2004 Stephanie gave birth to a baby girl, and HHSA subsequently filed a dependency petition on the baby's behalf. (§ 300, subds.(b) and (g).) The baby was detained in the same foster home as Hellena.

Although HHSA recommended services be terminated in Hellena's case, the court ordered six more months of services at the contested six-month review hearing on May 7, finding the parents had made progress.

On June 3 the baby died of sudden infant death syndrome. Hellena was placed in another foster home.

Meanwhile, Stephanie continued to participate in services. Her therapist reported that Stephanie was making progress, but needed additional therapy. Stephanie completed a domestic violence program, but the service provider expressed concerns about Stephanie's ability to assimilate concepts learned from the program into her personal life, noting that during group session Stephanie had not "demonstrated any . . . responsibility for her own behavior." Also, it was reported that Stephanie sometimes behaved inappropriately during her visits with Hellena.

B. also continued attending most of his services. B.'s therapist reported some progress, but said B. needed more therapy to address his issues. However, B. had explosive fits of anger on two occasions at the SARMS facility. B. attributed these episodes to the recent death of his baby daughter. B. resumed drinking and was not in compliance with SARMS.

HHSA recommended that services be terminated at the 12-month review hearing, and the parents set the matter for trial, which was held in September and October. As to Stephanie, the court found that reasonable services had been provided, she had regularly participated in the services, and there was a substantial probability of return by the 18-month date. As to B., the court found that reasonable services had not been offered to him because in the year following his expulsion from the SAFE PATHS program, HHSA did not provide an alternative service to address the sexual abuse allegations. As to both parents, the court ordered that reunification services be continued until the 18-month date. The court specifically directed HHSA to prepare a proposal to address the molestation issues and to give all psychological evaluations and reports to B.'s service provider. The court also directed HHSA to set up a treatment team meeting with Stephanie's service providers, as requested by her therapist.

In October B. was discharged from an outpatient alcohol treatment program for pulling out a box cutter, waving it around and threatening to kill himself during a group session. On October 31 B. was arrested for driving under the influence and driving with a suspended driver's license. B.'s request to participate in juvenile dependency drug court was granted. HHSA authorized individual therapy with Larry Corrigan, who specializes in sexual abuse treatment; however, Corrigan recommended group therapy for B., and HHSA authorized group sessions. B.'s therapist reported that his continued denial of responsibility will require "a significant amount of cognitive and reality oriented therapy, parenting classes, drug testing and visitation monitoring that will extend beyond the time frame of [Hellena's] welfare case plan for permanent placement."

Meanwhile, Stephanie continued to deny she was a victim of domestic violence. Stephanie refused to enter a 24-hour supervised domestic abuse shelter despite her therapist encouraging her to do so. The social worker also reported that Stephanie had not discussed her parenting plan, which she had developed in therapy, with anyone; this was contrary to Stephanie's testimony at the previous hearing. Stephanie's visits with Hellena continued to be problematic; the child sometimes pulled out her hair afterward.

Stephanie's therapist reported she was making progress until November and then started regressing. The therapist said Stephanie's thinking was scattered, she was distressed, and she was in denial. The therapist recommended that a permanent plan be ordered for Hellena because Stephanie's lack of insight and ambivalence made reunification impossible at that time or in the near future.

In early December Stephanie accused B. of throwing a brick through a window of her residence; B. denied the accusation.

HHSA recommended that services be terminated and a section 366.26 hearing be ordered at the upcoming 18-month review hearing on December 8. The parents requested a trial. Outside the courtroom, Stephanie and B. engaged in a verbal altercation that required intervention by court bailiffs.

The following day, B. telephoned the social worker and admitted he had molested Hellena's half-sister, S.W.

The contested 18-month hearing was held on January 6, 2005.

Social worker Catherine McAdams testified that she attempted to set up a team meeting between Stephanie's therapist and the other two remaining service providers, but

those providers refused and were not contractually obligated to attend such a meeting. The social worker suggested to the therapist that as an alternative he meet with other professionals in those fields, but the therapist declined because these professionals were not providing services to Stephanie. To provide the therapist with more input, the social worker informed him of each contact she had with Stephanie.

O'Meara, Stephanie's therapist, testified that Stephanie had not been truthful during therapy about a number of issues, including her relationship with B., and the dishonesty prevented her from fully addressing issues. O'Meara also testified he was frustrated because other service providers refused to participate with him in a case consultation; he believed it was necessary for his treatment of Stephanie to have information from the other providers. O'Meara said the lack of a case consultation hindered his ability to provide therapy to Stephanie.

Stephanie testified that on January 3 she had started living at the St. Vincent de Paul shelter and she planned to stay there as long as she could to "get up on my feet." Stephanie said she stopped going to O'Meara for therapy because she was hospitalized for kidney problems in December. Stephanie also said she would continue to participate in services if the court returned Hellena to her.

B. testified that he was enrolled in a sexual offender treatment program and had attended two sessions. B. acknowledged that he had molested Hellena's half-sister and the girl in Chicago, but said he did not realize this until the drunk driving incident in October when he became aware that he experienced blackouts when he was drunk.

At the conclusion of the hearing, the court found reasonable services had been offered to both parents and they had not made substantial progress with their case plans. The court ordered services to be terminated and set a section 366.26 hearing.

DISCUSSION

I. Reasonable Services Findings

Each parent contends the juvenile court erred in finding reasonable services had been provided to him or her. Neither parent's contention has merit.

"[T]he focus of reunification services is to remedy those problems which led to the removal of the children" (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1464.)

A reunification plan must be tailored to the particular individual and family, addressing the unique facts of that family. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) A social services agency is required to make a good faith effort to address the parent's problems through services, to maintain reasonable contact with the parent during the course of the plan, and to make reasonable efforts to assist the parent in areas where compliance proves difficult. (*Armando L. v. Superior Court* (1995) 36 Cal.App.4th 549, 554-555.) However, we recognize that in most cases more services might have been provided and the services provided are often imperfect. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R., supra*, 2 Cal.App.4th at p. 547.)

We determine whether substantial evidence supports the trial court's finding that reasonable services were provided, reviewing the evidence in a light most favorable to

the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court's ruling. (*In re Misako R.*, *supra*, 2 Cal.App.4th at p. 545.)

Stephanie's Services

Our review of the record shows substantial evidence supports the court's finding that reasonable services were offered to Stephanie. Hellena was removed from the home and declared a dependent of the court because her father had sexually abused her half-sister, and he remained in the home, putting Hellena at risk. Stephanie's case plan required her to undergo counseling, and participate in a domestic violence program and the SAFE PATHS program. These services were reasonable and addressed the issues that were pertinent to Hellena's dependency.

The problem was not with Stephanie's case plan, but rather with her willingness and/or ability to follow through with the services and acquire the ability to safely parent Hellena. Throughout these proceedings up until the contested 18-month review hearing, Stephanie denied B. molested her older daughter and there was domestic violence in her home. She also was considerably less than forthright with her therapist, which impeded progress. Stephanie also declined the social worker's offer to reunite her with Hellena conditioned on her entering a domestic violence shelter—even though her therapist encouraged her to do so.

Stephanie's admission to a domestic violence shelter less than a week before the contested 18-month review hearing and her testimony acknowledging that she has co-dependency problems is too little and too late.

Stephanie complains that her services were unreasonable because HHSA failed to follow the court's order to set up a consultation conference between her therapist and other service providers as the therapist sought. We disagree. HHSA substantially followed the court's order and demonstrated it did everything it could in this regard. The social worker attempted to arrange a consultation conference, but the other two remaining service providers refused. The social worker offered to set up a meeting with other professionals, but the therapist declined. The social worker informed the therapist of each contact she had with Stephanie.

Under these circumstances, the services were reasonable, notwithstanding HHSA's inability to set up a consultation between the therapist and Stephanie's other service providers. (*In re Misako R.*, *supra*, 2 Cal.App.4th at p. 547.)

B.'s Services

B.'s case plan called for him to undergo a psychological evaluation and counseling, and participate in a domestic violence program, a program addressing molest issues, and a parenting course. This case plan was reasonable and addressed the issues that were pertinent to Hellena's dependency case. HHSA also offered alcohol treatment services.

Although B.'s services were found to be unreasonable at the contested 12-month review hearing because sexual abuse issues had not been addressed after the SAFE PATHS program expelled him, HHSA then secured funding for B. to attend group counseling from Corrigan, a specialist in the area of sexual abuse.

In this writ proceeding, B. contends his services were unreasonable because treatment for his sexual abuse problems did not begin until December 2004—two months after the court specifically ordered HHSA to address this issue at the 12-month review hearing.

However, at the 18-month review hearing, B. did not raise the two-month delay in starting sexual abuse treatment; in fact, he did not raise any issue as to the sufficiency of the services. Thus, this issue is waived. (*In re Richard K.* (1994) 25 Cal.App.4th 580, 589-590.)

Even if there is no waiver, B.'s claim fails on the merits. The two-month delay did not make the services unreasonable nor did it have any significant impact. Throughout this case, B. had been in complete denial concerning the allegations of sexual abuse until his drunken driving arrest on October 31, 2004, which led to his recognition that he had blackouts when drunk and had molested the girls while in such a state. It was only then that sex abuse treatment could have had positive therapeutic value. "Traditional treatment is of limited value until the abuse is admitted." (*In re Jessica B.* (1989) 207 Cal.App.3d 504, 516.) As B. acknowledged at trial, his sexual abuse issues had not been addressed in his individual therapy because whenever his therapist brought up the subject, he denied it. Further, in assessing the reasonableness of services, the juvenile court can consider the extent to which the parent has availed himself of the services provided. (See § 366.21, subd. (f).) Up until the point that B. abandoned his categorical denial of the molestations, he had failed to avail himself of the counseling services that could have addressed sexual abuse issues. (See, e.g., *In re Jessica B.*, *supra*, at p. 517) [a

father's failure to admit fault indicates that he is neither cooperating nor availing himself of the services provided].) When B. admitted to the molestations to the social worker, she arranged for him to see Corrigan within days.

B. also asserts that HHSA failed to comply with the court's order to provide his therapist and Corrigan with psychological reports generated during Hellena's dependency. However, B. has not supported his assertion with references to the record. Rather, he assumes HHSA failed to comply with the court order because the social worker's report does not state she provided the documents to the therapist and Corrigan. That is not sufficient. There is a presumption that official duty has been regularly performed unless there is some evidence to the contrary. (Evid. Code, § 664; *Roelfsema v. Department of Motor Vehicles* (1995) 41Cal.App.4th 871, 879.) Further, the notion that B. was prejudiced because his service providers were not provided with documents lacks foundation and is speculative.

In sum, we conclude there was substantial evidence supporting the juvenile court's finding that the services provided to B. were reasonable under the circumstances of this case.

II. *Decision Not to Extend Services Beyond 18-Month Date*

Each parent contends the court erred in not extending reunification services beyond the 18-month date because HHSA failed to offer him or her reasonable services. We disagree with respect to each parent's contention.

California's juvenile dependency system contemplates a maximum reunification period of 18 months. (§§ 361.5, subd. (a)(3) & 366.22, subd. (a).) Section 361.5

provides the reunification services "may be extended up to a maximum time period not to exceed 18 months" if it can be shown that the objectives of the service plan can be achieved within the extended time period. (§ 361.5, subd. (a)(3).) As one court put it, "[T]here must be a limitation on the length of time a child has to wait for a parent to become adequate in order to prevent children from spending their lives in the uncertainty of foster care." (*Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1388.) A juvenile court's statutory options at the 18-month review hearing are to either restore custody of the dependent child to the parents, or terminate reunification services and refer the matter for a section 366.26 hearing. (§ 366.22, subd. (a); *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1015.)

However, the juvenile court has the discretion to extend reunification services beyond the statutory 18-month limit in special cases—namely, if (1) no reunification plan was ever developed for the parent; (2) the court finds reasonable services were not offered; or (3) the best interests of the child would be served by a continuance of the 18-month review hearing. (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 167.) For example, juvenile courts have exercised this discretion when the court finds that reasonable services have not previously been provided. (See, e.g., *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1778; *In re Daniel G.* (1994) 25 Cal.App.4th 1205, 1213-1214.)

In *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1791, 1792, 1793-1799, the Court of Appeal held a court could properly extend the reunification period beyond the statutory deadline in order to accommodate the special needs of a mentally ill parent, who had been hospitalized during most of the 18 months but nonetheless had substantially

complied with her case plan and had an exemplary record of visitation. The Court of Appeal reversed the judgment terminating parental rights and remanded the case to permit the juvenile court to exercise its discretion under section 352 to continue reunification services. (*Id.* at pp. 1778, 1799.) However, the *Elizabeth R.* court also noted the limited nature of the court's discretion in this area, noting it serves as "an emergency escape valve in those rare instances in which the juvenile court determines the best interests of the child would be served by a continuance" beyond the statutory deadline. (*Id.* at pp. 1798-1799.) As the Court of Appeal in *Andrea L. v. Superior Court*, *supra*, 64 Cal.App.4th at page 1388, observed: "[I]n these cases, there were extraordinary circumstances which militated in favor of extension of . . . services beyond the 18-month limit. These circumstances uniformly involved some external factor which prevented the parent from participating in the case plan."

The juvenile court's decision whether to extend services beyond the 18-month date is reviewed for an abuse of discretion. (*Andrea L. v. Superior Court*, *supra*, 64 Cal.App.4th at p. 1388.) As a reviewing court, we will not disturb a trial court's discretionary ruling, absent a clear abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

Stephanie's Claim

Stephanie contends the juvenile court abused its discretion in not ordering additional reunification services because by failing to arrange a consultation conference for her therapist, HHSA had not provided her with reasonable services. This contention

is without merit; as we found in Part I, *ante*, substantial evidence supported the court's finding that HHSA provided reasonable services.

Stephanie also claims that B. was entitled to additional services and it was an abuse of discretion not to order additional services for her as well because it would have been in Hellena's best interests for Stephanie to have further time to reunify. There is no merit to this claim. Stephanie did not raise this issue below, and it is not preserved for appeal. (See *In re Kevin S.* (1996) 41 Cal.App.4th 882, 885.) Moreover, Stephanie lacks standing to raise issues regarding B.'s services. (See *In re Devin M.* (1997) 58 Cal.App.4th 1538, 1541-1542; *In re Frank L.* (2000) 81 Cal.App.4th 700, 703.) As to the substantive issue, there is no evidence that it would have been in the best interests of Hellena, who had been in foster care for almost her entire life, to continue services for Stephanie, who did not acknowledge her co-dependency problem until the 18-month date had passed.

None of the recognized circumstances for extending services beyond the 18-month date apply to Stephanie. The court did not abuse its discretion in declining to extend the reunification period.

B.'s Claim

B. also contends the court abused its discretion by not ordering additional reunification services because HHSA had not provided him with reasonable services. We have already rejected B.'s claim of unreasonable services in Part I, *ante*, finding substantial evidence supported the court's finding of reasonable services.

Additionally, B. claims his case is "unique" because he suffered from blackouts, which had prevented him from realizing he had molested the girls, and once he discovered this, he sought sexual abuse treatment. B. argues that he should receive more services because the discovery came late in the case and he has not had sufficient time to adequately benefit from the services.

We acknowledge B.'s breakthrough was a positive development, and we commend him for beginning to effectively address the serious issues in his case—his sexual abuse problem, alcoholism and explosive anger. Nonetheless, we cannot find that any of the exceptional circumstances recognized by caselaw as justifying an extension of services beyond 18 months applied to him. B. was given a case plan; we have found reasonable services were offered; and there is no evidence that continuing reunification services beyond 18 months would be in Hellena's best interest. Nor can we characterize his long-time denial of the molestations and his recent breakthrough in that regard as the type of extraordinary circumstance present in *In re Elizabeth R.*, *supra*, 35 Cal.App.4th 1774, that justifies extending services beyond the statutory maximum. There was no "external factor which prevented [B.] from [meaningfully] participating in the case plan" before his breakthrough. (*Andrea L. v. Superior Court*, *supra*, 64 Cal.App.4th at p. 1388.) Rather, the cause was personal to B.—his alcoholism.

Moreover, B. has not shown how extending Hellena's dependency would be in her best interests. Hellena has been in foster care for almost her entire life. She deserves stability now. "Children should not be required to wait until their parents grow up." (*In re Rikki D.* (1991) 227 Cal.App.3d 1624, 1632.)

The juvenile court did not abuse its discretion in declining to extend services to B.
beyond the statutory maximum time.

DISPOSITION

The petitions are denied.

McCONNELL, P. J.

WE CONCUR:

HALLER, J.

AARON, J.